

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7291

BILL NUMBER: HB 1349

NOTE PREPARED: Feb 4, 2004

BILL AMENDED: Feb 2, 2004

SUBJECT: Litigation by Inmates.

FIRST AUTHOR: Rep. Chowning

FIRST SPONSOR:

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. It provides that before filing a civil rights action or tort claim action against a public employee or government entity, an offender must submit certain documentation to the court. It requires a court to screen an offender's complaints and petitions and dismiss a claim that is frivolous, seeks monetary relief from a defendant who is immune from such relief, or is not a claim upon which relief may be granted. It prohibits an offender who has had three claims dismissed after court screening from filing an action unless a court determines that the offender is in immediate danger of serious bodily injury.
- B. It provides that a firearm owner is immune from civil liability for an act or omission relating to a firearm use by another person unless the owner entrusted the firearm to the other person in furtherance of a criminal act.

Effective Date: (Amended) Upon passage; July 1, 2004.

Explanation of State Expenditures: (Revised) *Provision A – Note: The procedures in this bill would apply to all offender litigation filed after June 30, 2004.* Under current law, when an offender confined to a state correctional facility files a lawsuit, the court is required to review the case and require the opposing party to respond. If the state of Indiana is the defendant, then the Office of the Attorney General will be the responding party. Based on the nature of the lawsuit, the responding party can request that the court dismiss the lawsuit without any further review.

This bill would require the court to dismiss a civil action or an appeal of a judgement in a civil action or proceeding if the court determines the action is frivolous, malicious, or fails to state a claim. Also, the offender may not bring an action if the offender has brought three prior actions that were dismissed on the grounds that the actions were frivolous, malicious, or failed to state a claim. When an action is brought by

a prisoner against a public employee or government entity, among other requirements, the bill would require an offender to provide a list of all cases previously filed by the offender and file a brief that includes the legal argument, citation to authority, and explanation of why the new action is not subject to dismissal as a matter finally decided on its merits. The court would then dismiss any cases that are determined to be frivolous, malicious, or otherwise utterly without merit, or that fails to state a claim.

The bill would reduce the work load of the Office of the Attorney General if the court which receives these cases reviews and dismisses these claims without requiring the AG's Office to respond. The Torts Claims Division of the Office of the Attorney General reports the following information about claims from offenders.

		Disposition		
	Total Number of Prisoner Claims	State Paid On	Still Open	Closed with Nothing Paid
FY 2002	711	55	7	649
FY 2003	766	32	46	688

Of the total claims paid in 2002 and 2003, 83 of the 87 paid were for damage of property belonging to a prisoner. Other than appeals against sentences imposed, when offenders file lawsuits against the state, the cases often involve small claims cases for property damage, mistreatment by staff, and petitions for credit time for education. When the defendants are individuals, the cases will often involve divorce, child support, and paternity actions and citations.

Provision B potentially makes state agencies which furnish firearms to its employees immune from this type of lawsuit if an employee's weapon is used by another party in the commission of a crime. A partial listing of agencies that issue firearms to certain employees include:

- the Indiana State Police;
- the Department of Natural Resources;
- the Alcohol and Tobacco Commission;
- the Department of Correction; and
- War Memorial Security Officers

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) *Provision A* – This bill would require the court to examine these claims first and then determine whether the claim would proceed. ***Since the judge will review the claim anyway, this requirement will not likely have any practical effect on court operations.***

Potential Counties Affected: This bill would affect all counties in Indiana because all incarcerated persons would be required to follow the procedures in this bill, whether they are confined to county jails or the Department of Correction (DOC). Counties where a large number of offenders are located are likely to have more litigation to review than others. There are 16 counties with adult facilities in Indiana that would be affected by this bill. The five counties with the largest adult offender population are LaPorte, Miami, Hendricks, Putnam, and Sullivan. There are eight counties that have juvenile correctional facilities including Allen, Cass, Hendricks, LaPorte, Madison, Marion, Monroe, and St. Joseph. DOC offenders are also housed in county jails in 66 counties that have contracts with DOC to house these offenders.

Provision B could make local law enforcement agencies immune from this type of lawsuit if an officer's weapon is stolen.

Explanation of Local Revenues:

State Agencies Affected: Attorney General; Indiana State Police; Department of Natural Resources; Alcohol and Tobacco Commission; Department of Correction; and War Memorial Security Officers.

Local Agencies Affected: Courts.

Information Sources: Office of the Attorney General.

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